IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs March 9, 2007

MBNA AMERICA BANK, N.A. v. TREY BAKER

Appeal from the Chancery Court for Robertson County
No. 17863 Carol A. Catalano, Chancellor

No. M2004-02239-COA-R3-CV - Filed November 15, 2007

This appeal involves a dispute over a credit card debt. The holder of the card made over $16,000 in charges on the card and then declined to pay the bank that issued the card. The bank pursued arbitration under the credit card agreement and was awarded $19,241.74. When the cardholder declined to pay, the bank filed suit in the Chancery Court for Robertson County to enforce the arbitration award. The cardholder insisted that the trial court lacked subject matter jurisdiction and that he had no contractual obligation to the bank to repay the debt. He also asserted that his wife should be joined as a party. The trial court granted the bank's motion for summary judgment, and the cardholder has appealed. We affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Trey Baker, Springfield, Tennessee, Pro Se.

Timothy L. Edington, Knoxville, Tennessee, for the appellee, MBNA America Bank, N.A.

OPINION

I.

Trey Baker obtained a credit card from MBNA America Bank, N.A. ("MBNA"). By early 2002, he had made charges on the card in excess of $16,000 and was unable to make the required payments. In correspondence with MBNA in mid-2002, Mr. Baker acknowledged that he had used the card to make the purchases but disputed MBNA's authority to require him to repay his debt.[1] Unconvinced by Mr. Baker's interpretations of debtor/creditor law, the bank continued to press Mr. Baker for payment.

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[1] Mr. Baker devised a number of convoluted arguments based on his understanding of federal law to support his refusal to repay MBNA. We need not address the substance of these arguments in this opinion.

Mr. Baker eventually requested the American Arbitration Forum to arbitrate his dispute with MBNA, even though the credit card agreement required arbitration by the National Arbitration Forum. At the same time, MBNA pursued arbitration with the National Arbitration Forum. Somehow, Mr. Baker obtained a default judgment against MBNA from the American Arbitration Forum on November 1, 2002. For its part, MBNA obtained a $19,241.74 default judgment against Mr. Baker from the National Arbitration Forum on December 13, 2002.

On December 17, 2003, MBNA filed suit against Mr. Baker in the Chancery Court for Robertson County to enforce its arbitration award. Mr. Baker, representing himself, moved to dismiss the complaint. He argued that the trial court lacked subject matter jurisdiction, that he had no contract with MBNA that required him to repay his credit card purchases, and that MBNA had failed to provide him the validation of the debt required by the Fair Debt Collection Practices Act.

MBNA filed a motion for summary judgment on December 17, 2003. In its statement of undisputed facts, MBNA asserted (1) that Mr. Baker had entered into a credit card agreement that provided for arbitration by the National Arbitration Forum, (2) that Mr. Baker defaulted on the agreement, (3) that an arbitrator granted MBNA an award, and (4) that the arbitration agreement was valid pursuant to Tenn. Code Ann. § 29-5-302 (2000). Mr. Baker responded that he had no contract with MBNA and that MBNA's arbitration award was invalid because Mr. Baker had obtained an award from another forum first. Mr. Baker also filed a motion to join his wife, Melissa Baker, as a party and a motion to order MBNA to cease collection activities on Mr. Baker's account.

On September 8, 2004, the trial court granted MBNA's motion for summary judgment. The trial court also denied Mr. Baker's motion to join his wife as a party and declared that Mr. Baker's request for an order requiring MBNA to cease its collection activities was moot. Mr. Baker perfected this appeal.

II.

The standards for reviewing summary judgments on appeal are well settled. Summary judgments are proper in virtually any civil case that can be resolved on the basis of legal issues alone. *Fruge v. Doe*, 952 S.W.2d 408, 410 (Tenn. 1997); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993); *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001). They are not, however, appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. Thus, a summary judgment should be granted when the undisputed facts, as well as the inferences reasonably drawn from the undisputed facts, support only one conclusion – that the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001).

The party seeking a summary judgment bears the burden of demonstrating that no genuine dispute of material fact exists and that it is entitled to a judgment as a matter of law. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *Shadrick v. Coker*, 963 S.W.2d 726, 731 (Tenn. 1998). When the moving party is the defendant, it is entitled to a judgment as a matter of law only when it affirmatively negates an essential element of the non-moving party's claim or establishes an

affirmative defense that conclusively defeats the non-moving party's claim. *Byrd v. Hall*, 847 S.W.2d at 215 n.5; *Cherry v. Williams*, 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

Summary judgments enjoy no presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003); *Scott v. Ashland Healthcare Ctr., Inc.*, 49 S.W.3d 281, 285 (Tenn. 2001). Accordingly, appellate courts must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997). We must consider the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in the non-moving party's favor. *Godfrey v. Ruiz*, 90 S.W.3d at 695; *Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001).

When reviewing the evidence, we must determine first whether a factual dispute exists. If a factual dispute exists, we must then determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d at 214; *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998).

III.

Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000); *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997). The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App.1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995).

The courts give pro se litigants who lack formal legal training a certain amount of leeway in drafting their pleadings and briefs. *Whitaker v. Whirlpool Corp.*, 32 S.W.3d at 227; *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d at 397. Accordingly, we measure the papers prepared by pro se litigants using standards that are less stringent than those applied to papers prepared by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9-10, 101 S. Ct. 173, 176 (1980); *Baxter v. Rose*, 523 S.W.2d 930, 939 (Tenn. 1975); *Winchester v. Little*, 996 S.W.2d 818, 824 (Tenn. Ct. App. 1998).

Pro se litigants should not be permitted to shift the burden of the litigation to the courts or to their adversaries. They are, however, entitled to at least the same liberality of construction of their pleadings that Tenn. R. Civ. P. 7, 8.05, and 8.06 provide to other litigants. *Irvin v. City of Clarksville*, 767 S.W.2d at 652. Even though the courts cannot create claims or defenses for pro se litigants where none exist, *Rampy v. ICI Acrylics, Inc.*, 898 S.W.2d 196, 198 (Tenn. Ct. App. 1994), they should give effect to the substance, rather than the form or terminology, of a pro se litigant's papers. *Brown v. City of Manchester*, 722 S.W.2d 394, 397 (Tenn. Ct. App. 1986); *Usrey v. Lewis*, 553 S.W.2d 612, 614 (Tenn. Ct. App. 1977).

IV.

We have reviewed the evidence in the record with all due deference to Mr. Baker's status as a pro se party. We agree with the trial court that the award of summary judgment was proper. By his own admission, Mr. Baker made the purchases at issue in this case with the card provided by MBNA, and he was provided with validation of the debt. The cardholder agreement clearly calls for arbitration to be conducted by the National Arbitration Forum. MBNA has presented a valid award from the National Arbitration Forum and, pursuant to Tenn. Code Ann. § 29-5-302(b), the court has jurisdiction to enforce the claim. Mr. Baker has failed to establish that there are any material facts in dispute. Accordingly, the award of summary judgment was proper in this matter. We also agree that Mr. Baker's wife was not a cardholder and is not, therefore, a proper party to this matter. Finally, having determined that the arbitration award in this case is valid, we agree that Mr. Baker's motion for the cessation of collection activities is moot.

V.

The judgment of the trial court is affirmed and the case is remanded to the trial court for further proceedings consistent with this opinion. We tax the costs of this appeal to Trey Baker for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR.,P.J., M.S.